



FmHA AN No. 2491 (1955)
March 12, 1992

SUBJECT: Current Authorities for Managing Farmer Programs
Inventory Property

TO: State Directors, District Directors and County Supervisors

ATTN: Farmer Programs Chiefs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the current authorities for the management, leasing and sale of Farmers Home Administration (FmHA) acquired farm inventory property. The intended outcome is to ensure that Field Offices manage FmHA inventory property in a uniform and consistent manner until FmHA regulations implementing the Food, Agriculture, Conservation, and Trade Act of 1990, are promulgated.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

IMPLEMENTATION RESPONSIBILITIES:

Farmers Home Administration (FmHA) regulations for the "Establishment of Wetland Conservation Easements," "Beginning Farmer," and "Reducing Habitat Period" are expected to be published in the near future. In the interim (until such time as these regulations are published), you should continue to manage your inventory properties in the following manner:

1. VOLUNTARY CONVEYANCES:

- (a) Voluntary conveyances may be accepted in accordance with existing regulations.
- (b) If the farm contains wetlands, the County Supervisor must **NOTIFY THE BORROWER IN WRITING** that a wetland conservation easement will be placed on the property if the conveyance is accepted.
- (c) Leaseback/buyback and/or homestead protection approvals will be subject to such easement.

EXPIRATION DATE: SEPTEMBER 30, 1992

FILING INSTRUCTION:

**PRECEDING FmHA
INSTRUCTION 1955-C**



2. **LEASEBACK/BUYBACK REQUESTS APPROVED ON/OR BEFORE NOVEMBER 28, 1990:**
 - (a) You should continue to process Preservation Loan Servicing (including sales and leases under Leaseback/Buyback) on requests for Leaseback/Buyback which were approved on/or before the close of business November 28, 1990, EVEN IF THE PROPERTY CONTAINS WETLANDS.
 - (b) Approval would have been evidenced by FmHA's execution of one of the following:
 1. Form FmHA 1955-20, Lease of Real Property; or
 2. FmHA Instruction 1951-S, Exhibit N, Leaseback/Buyback Agreement.
3. **LEASEBACK/BUYBACK OR HOMESTEAD PROTECTION REQUESTS NOT APPROVED ON/OR BEFORE NOVEMBER 28, 1990:**
 - (a) If FmHA has not yet acquired title to the property, the County Supervisor must NOTIFY THE BORROWER IN WRITING that a conservation easement may be placed on the property if the Government acquires title.
 - (b) Leaseback/buyback and/or homestead protection rights will be subject to such easement.
4. **THE 1990 FACT ACT WILL IMPOSE SOME LIMITATIONS ON WETLAND EASEMENTS. THEREFORE, FOR LEASEBACK/BUYBACK PROPERTIES WITH IDENTIFIED WETLANDS (AS DETERMINED BY THE U.S. FISH AND WILDLIFE SERVICE), THE FOLLOWING STIPULATION MUST BE INCLUDED IN THE LEASE AGREEMENT:**
 - (a) "The lessee acknowledges that the real property identified as restricted areas on the topographical map attached to this lease will not be used for agricultural production or pasture/forage purposes. The lessee further acknowledges that in the event FmHA regulations are amended to permit a less restrictive use of the wetland area, that the terms of the lease may be amended to permit a greater use for agricultural production purposes of the wetland area and the lease payment adjusted accordingly. Likewise, in the event the lessee exercises the option to purchase the property, and FmHA regulations permit at that time a less restrictive use of the wetland area, the lessee may purchase the property with the less restrictive easement provisions."
 - (b) This stipulation is to ensure that the lessee acknowledges the existence of all use restrictions, including wetland restrictions.
 1. The wetland restrictions may be reformed once appropriate FmHA regulations are implemented.

2. If the lessee exercises the buyback option before regulations are in place, wetland easements will be attached pursuant to FmHA Instruction 1955-B and 1955-C.
 3. Once new regulations are in place, and the option has not been exercised, the lease will be modified to reflect the new regulations.
- (c) If buyback is being processed without the leaseback option and the property contains wetlands:
1. The property will be sold with the maximum amount of eligible land being placed under conservation easement in accordance with FmHA Instruction 1955-C.
 2. The appraised value MUST reflect the proposed easements.
 3. The following language will be included in the sales contract:

"The buyer acknowledges that the real property identified herein, is subject to certain use restrictions in accordance with FmHA Instruction 1955-B and 1955-C. The applicable restrictions are attached as part of this sales contract. The buyer further acknowledges that in the event FmHA regulations are later amended to permit a less restrictive use of the wetland area, that the terms of this contract WILL NOT be amended once the sale has been closed to permit a greater use of the wetland area."
5. IF A LEASEBACK/BUYBACK AND/OR HOMESTEAD PROTECTION REQUEST IS MADE PRIOR TO ACQUISITION:
- If the borrower does not wish to enter into a leaseback/buyback and/or homestead protection program agreement because of the proposed land use restrictions, then the request should be denied with appeal rights.
6. IF A LEASEBACK/BUYBACK AND/OR HOMESTEAD PROTECTION REQUEST IS MADE AFTER ACQUISITION:
- (a) The applicant may reserve the right to wait and enter into a lease at the time the new regulations are issued regarding wetland restrictions.
 - (b) If the applicant decides not to enter into a lease at the current time, the leaseback/buyback and/or homestead protection request will be held in suspense until the new regulations are implemented.
 - (c) The applicant must be notified in writing that he/she has no authority to conduct business on the property until the lease has been executed.

7. SALES OF INVENTORY FARM PROPERTY WHERE ALL LEASEBACK/BUYBACK AND HOMESTEAD PROTECTION RIGHTS HAVE BEEN EXHAUSTED:

- (a) FmHA may only sell a limited number of properties because of revisions being made to the regulations to implement new conservation wetland easement requirements and to provide a priority to beginning farmers.
- (b) You can continue with the sale of the following Farmer Programs inventory properties:

Surplus Property:

- 1. Any surplus property that DOES NOT contain wetlands.
- 2. Any surplus property that DOES contain wetlands where a conservation easement deed has previously been recorded.

8. SALES OF INVENTORY FARM PROPERTY UNDER THE LEASE OPTION IN EXISTING LEASEBACK AND HOMESTEAD PROTECTION LEASES:

Leaseback/Buyback and Homestead protection property which is subject to an existing lease option in a Leaseback lease or a Homestead protection lease may be sold subject to the terms of the lease option when the lessee exercises the option:

- (a) Leaseback/Buyback and Homestead Protection property under lease option that DOES NOT contain wetlands may be sold with no conservation wetland easement restrictions.
- (b) Property leased under the Leaseback/Buyback and Homestead Protection program that contains wetlands where the lessee-purchaser is agreeable to purchasing the property with full conservation wetland easement restrictions may be sold subject to the provisions of paragraph 4(c) above.

9. THE TWO GROUPS OF FARM PROPERTY THAT CANNOT BE SOLD UNTIL THE NEW REGULATIONS ARE ISSUED ARE AS FOLLOWS:

- (a) Those surplus properties that do contain wetlands and a conservation wetland easement deed HAS NOT been previously recorded.
- (b) Suitable properties, where leaseback/buyback rights have been exhausted.
- (c) Suitable property where an appeal is pending. These properties cannot be classified as surplus while the appeal is pending.

10. TRANSFERS OF FARM INVENTORY PROPERTY FOR CONSERVATION PURPOSES:

- (a) Inventory property can continue to be transferred to Federal and State Agencies for conservation purposes, in accordance with FmHA Instruction 1955-C, section 1955.139 (c).
- (b) These transfers can only be approved by the Administrator.

ANY REVISIONS OR MODIFICATIONS TO THIS UNNUMBERED LETTER THAT YOU WISH TO PUBLISH AS A STATE DIRECTIVE MUST BE SUBMITTED AND APPROVED BY THE ASSISTANT ADMINISTRATOR OF FARMER PROGRAMS BEFORE IT IS RELEASED FOR IMPLEMENTATION IN YOUR STATE. THE ONLY EXCEPTION TO THIS REQUIREMENT IS WHEN THE REVISION OR MODIFICATION IS NECESSARY FOR COMPLIANCE WITH THE STATE LAW.



LA VERNE AUSMAN
Administrator

Sent by Time Delay Option to States at 8:00 am on 3/13/92; to Districts at 10:00 am on 3/13/92; and Counties at 12:00 pm on 3/13/92 by GSS.